

NO. DC-19-09828

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| D&T PARTNERS, LLC |) | IN THE DISTRICT COURT |
| (Successor in interest to |) | |
| ACET VENTURE PARTNERS, |) | |
| LLC), |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| VS. |) | |
| |) | DALLAS COUNTY, TEXAS |
| ACET GLOBAL, LLC; BAYMARK |) | |
| ACET HOLDCO, LLC; BAYMARK |) | |
| MANAGEMENT, LCC; BAYMARK |) | |
| MANAGEMENT, LLC; BAYMARK |) | |
| PARTNERS; DAVID HOOK; TONY |) | |
| LUDLOW; and WINDSPEED |) | |
| TRADING, LLC, |) | |
| |) | |
| Defendants |) | 116th JUDICIAL DISTRICT |

REMOTE ORAL AND VIDEOTAPED DEPOSITION OF

MARC COLE

April 1, 2021

Volume 2

REMOTE ORAL AND VIDEOTAPED DEPOSITION OF MARC COLE, produced as a witness at the instance of the PLAINTIFF, and duly sworn, was taken in the above-styled and numbered cause on April 1, 2021, from 10:18 a.m. to 12:28 p.m., via videoconference, before Karen Usher, CSR in and for the State of Texas, reported by machine shorthand, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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| <p>1 FOR THE WITNESS:</p> <p>2 MR. JOHN DAVID BLAKLEY</p> <p>3 Dunn Sheehan LLP</p> <p>4 3400 Carlisle Street</p> <p>5 Suite 200</p> <p>6 Dallas, Texas 75204</p> <p>7 (214) 764-8333</p> <p>8 jdblakley@dunnsheehan.com</p> <p>9</p> <p>10 ALSO PRESENT:</p> <p>11 Mr. Tomer Damti</p> <p>12 Mr. Matt Denegre</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p>1 PROCEEDINGS</p> <p>2 MR. PERRIN: One, I'd like to reflect</p> <p>3 we're on the record again with the continuation of the</p> <p>4 deposition of Marc Cole -- number one. Number two, this</p> <p>5 deposition is being recorded by Mr. Freeman's office,</p> <p>6 and we request that a copy of the -- recording of the</p> <p>7 entire deposition as soon as possible. Would that be</p> <p>8 possible, Zach?</p> <p>9 MR. MONTGOMERY: Yes.</p> <p>10 MR. PERRIN: And I believe the</p> <p>11 appearances today are the same, except I think, Zach,</p> <p>12 you're here on behalf of the plaintiff?</p> <p>13 MR. MONTGOMERY: That is correct.</p> <p>14 MR. PERRIN: And it's Zach Montgomery,</p> <p>15 for the record.</p> <p>16 This deposition was adjourned from Monday</p> <p>17 and is being continued today upon agreement of the</p> <p>18 parties, and would like to ask if any objections going</p> <p>19 forward with the deposition today with the parties and</p> <p>20 counsel present.</p> <p>21 MR. BLAKLEY: This is J.D. Blakley,</p> <p>22 counsel for the third-party deposition witness. We have</p> <p>23 agreed to be here for approximately an hour and a half</p> <p>24 of additional record time and have no objection to</p> <p>25 pursuing -- per that agreement that we made on Monday.</p> |

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| <p style="text-align: right;">Page 211</p> <p>1 MR. PERRIN: Thank you, J.D. 2 All right. Then let's -- let's move 3 forward then. Just -- Mr. Montgomery, for your benefit, 4 we do have an agreement in place that one objection by 5 J.D. on behalf of the witness or the defendants will 6 serve as an objection for all, and we've had that 7 before. 8 And now I'd like to -- Mr. Cole, I would 9 like to remind you that you were sworn in at the 10 commencement of your deposition, and this is a 11 continuation of that deposition; so you're still under 12 oath. Do you understand that? 13 THE WITNESS: I understand. 14 MR. PERRIN: All right. 15 EXAMINATION 16 BY MR. PERRIN: 17 Q. Mr. Cole, I represent the following 18 defendants: ACET Global, LLC, Baymark ACET Holdco, LLC, 19 Baymark ACET Direct Invest, LLC, Baymark Management, 20 LLC, Baymark Partners, LLC, David Hook, and Tony Ludlow. 21 Do you understand that? 22 A. Yes. 23 Q. I'd like to have an agreement with you. When 24 I refer to the Baymark defendants, I'll be referring to 25 all those defendants. All right?</p> | <p style="text-align: right;">Page 213</p> <p>1 manager, member or otherwise of Super G? 2 A. No. 3 Q. Has any entity in which Baymark Partners is or 4 was an owner, manager, member, et cetera, ever been an 5 owner or manager or member of Super G? 6 A. No. 7 Q. Has Baymark Management, LLC, ever been an 8 owner, manager or member of Super G? 9 A. No. 10 Q. Prior to this transaction, has Super G ever 11 done business with David Hook? 12 A. No. 13 Q. Prior to this transaction, has Super G ever 14 done business with an entity in which David Hook is or 15 was an owner, manager, member, officer or director? 16 A. Not that I'm aware of. 17 Q. And prior to this transaction, has Super G 18 ever done business with Tony Ludlow? 19 A. I don't believe so, no. 20 Q. And prior to this transaction, has Super G 21 ever done any business with any entity in which Tony 22 Ludlow is or was an owner, manager, member, officer or 23 director? 24 A. No. 25 Q. Have you ever -- before this transaction, have</p> |
| <p style="text-align: right;">Page 212</p> <p>1 A. Understood. 2 Q. And at some point in time, I may refer to 3 "Baymark parties," and that will be the Baymark 4 defendants plus one other entity, which is Baymark 5 Partners Management, LLC. Can we have that 6 understanding too? 7 A. Yes. 8 Q. Thank you. Mr. Cole, has David Hook ever been 9 an owner, manager, member, officer, director or 10 otherwise affiliated with Super G? 11 A. No. 12 Q. Has any entity in which David Hook is or was 13 an owner, manager, member, officer, director ever been 14 an owner, manager, member or otherwise affiliated with 15 Super G? 16 A. No. 17 Q. Has Tony Ludlow ever been an owner, manager, 18 member, officer, director of Super G? 19 A. No. 20 Q. Has any entity in which you're aware Tony 21 Ludlow is or was an owner, manager, officer or director 22 ever been an owner, manager, member or otherwise 23 affiliated with Super G? 24 A. No. 25 Q. Has Baymark Partners ever been an owner,</p> | <p style="text-align: right;">Page 214</p> <p>1 you ever done business with any of the Baymark parties? 2 A. I have not, no. 3 Q. Has Super G? 4 A. No. 5 Q. Have you ever spoken to Tony Ludlow? 6 A. I don't believe so. 7 Q. Have you ever spoken to David Hook? 8 A. I don't believe so. 9 Q. Never met him? 10 A. No. 11 Q. How did you become -- you've already 12 testified, we've discussed, that this involved an Asset 13 Purchase Agreement -- this case does, involved an Asset 14 Purchase Agreement involving ACET Global and some other 15 parties, correct? 16 A. Yes. 17 Q. And that was in July of 2017? 18 A. Approximately. 19 Q. And I'll refer to that as the "APA 20 transaction" going forward. Is that all right? Do you 21 understand? 22 A. Yes. 23 Q. How did you become aware of the possible APA 24 transaction? 25 A. I was the CFO of Super G Capital. Super G</p> |

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| <p>1 Capital was in the business of making commercial loans. 2 I had a Dallas-area loan officer named Steven Bellah who 3 brought to the firm's attention that there was an 4 opportunity to finance the acquisition of ACET. 5 Q. And did he tell you anything about the parties 6 involved? 7 A. My understanding was that a Dallas-area 8 private equity firm was acquiring a controlling interest 9 in the company, named -- and that party was Baymark. 10 Q. Let me have one clarification for the record. 11 It was done in your last deposition. I want to have the 12 understanding with you as well, as was before, we're 13 asking you questions today as a corporate representative 14 on behalf of Super G. And that is what I'm asking when 15 I say "you" or otherwise, unless I specify you 16 individually. Can we have that agreement? 17 A. Yes. 18 Q. Would that change any of your prior answers 19 today? 20 A. No. 21 Q. Let's take a look, if you would, at 22 Plaintiff's Exhibit 8. That's not Exhibit 8. 23 A. No. 24 Q. Exhibit 8 is the -- 25 A. The loan agreement.</p> | <p>1 Q. If you look at Page 28, whose signature is 2 that? 3 A. Mine. 4 Q. Is that a true and correct copy of your 5 signature? 6 A. Yes, it is. 7 Q. Is this a true and correct copy of the 8 Business Loan & Security Agreement? 9 A. Yes. 10 Q. And if you look at this, it provides for an 11 amount of first loan of how much? 12 A. \$750,000. 13 Q. Now, of that amount, only \$733,308.44 was 14 disbursed. Do you see that? 15 A. Yes. 16 Q. Yeah, the remaining disbursement amount on the 17 screen there. 18 A. I see it. 19 Q. Is this a -- generally, the standard form of 20 the loan agreement and security agreement used by Super 21 G? 22 A. Yes, it was at the time. 23 Q. Okay. I'd ask you to turn to the fourth page 24 of this agreement, Section 2.8, "Escrow Account." 25 A. Yes.</p> |
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| <p>1 MR. PERRIN: Yeah. I think you put up -- 2 I think that's Defendants' Exhibit 8, Chase. 3 THE VIDEOGRAPHER: Okay. We may have 4 another issue. Those are the only exhibits. I was only 5 given Defendants' Exhibits. 6 THE REPORTER: Ed, I sent him the exhibits 7 you sent me. 8 MR. PERRIN: Karen, the other exhibits 9 were introduced in the last hearing -- in the first part 10 of this deposition. 11 THE REPORTER: All right. Let's go off 12 the record, and I'll send them to Chase right now. 13 MR. PERRIN: Great. Thank you. 14 (Break taken from 10:25 a.m. to 15 10:33 a.m.) 16 Q. (BY MR. PERRIN) Mr. Cole, this is Exhibit 8. 17 It's entitled a "Business Loan & Security Agreement" 18 dated July 20th, 2017. Do you see that? 19 A. I do. 20 Q. And I'm going to ask that you take a look at 21 the signature page for that document, which is Page 27 22 of the document. 23 A. Yes, I see it. 24 Q. Page 27, whose signature is that on Page 27? 25 A. David Hook.</p> | <p>1 Q. And what's the purpose of this provision? Why 2 is your understanding you needed to have it? 3 A. This was a very unusual provision for Super G 4 Capital. We rarely used escrow accounts. My belief is 5 that it was due in part to enhanced risk that I or 6 others saw in the transaction. 7 Q. Okay. If you look at Section 3, "Security 8 Interest in the Collateral," why, to your understanding, 9 is this provision included in the security agreement? 10 A. This provision is standard in every commercial 11 loan agreement. We -- Super G Capital is a secured 12 lender, and this is the provision to secure the 13 collateral. 14 Q. And begins the -- outlining your legal rights 15 with respect to the collateral? 16 A. Yes, the fundamental rights below. 17 Q. And then if you look at the bottom of that 18 page, 3.4, it appoints Super G as the 19 "attorney-in-fact." Do you see that? 20 A. Yes. 21 Q. And why would you want that? 22 A. The lender would require that -- in the event 23 the borrower was acting improperly with the collateral, 24 that the lender has the ability to act as their 25 attorney-in-fact to make the proper decisions, for</p> |

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| <p>1 example, secure insurance if the assets were being 2 uninsured, put them in a secure location if the assets 3 were not being properly maintained. It's meant to 4 protect the lender's collateral. 5 Q. All right. So this protects the lender's 6 collateral. 7 If you look at 3.4, in the third line, it 8 says you're going to take those steps and be 9 attorney-in-fact, "So as to permit the lender to take 10 any action and execute any instrument that Lender deem 11 necessary or advisable to accomplish the purpose of this 12 Agreement, including but not limited to the continuing 13 perfection of Lender's security interest." 14 Do you see that? 15 A. I do. 16 Q. Was it important to Super G that it be able to 17 take any acts necessary to protect its collateral? 18 A. Yes. It's a standard requirement in a 19 commercial loan transaction. 20 Q. Did it do so in this case? 21 A. Well, ultimately, yes, in the foreclosure of 22 the collateral. 23 Q. Okay. If you look at Page 10 of this 24 document, Section 6, "Negative Covenants" -- 25 A. Yes.</p> | <p>1 rates. Anything other than that required the lender's 2 permission. 3 Q. Thank you. If you look at -- on Page 12, 4 Section 7, "Events of Default." 5 A. Yes. 6 Q. Did events of default occur with respect to 7 the ACET Global loan? 8 A. Yes. 9 Q. Can you look at Section 8 on Page 14? 10 A. Yes. 11 Q. And this gives the remedies that are available 12 to Super G upon default? 13 A. That's correct. 14 Q. And under Section 8.3, it recites that Super G 15 had the right to make such payments and do such acts as 16 lenders considered necessarily or reasonable to protect 17 the security interest in the collateral; is that 18 correct? 19 A. That's correct. 20 Q. Is it your understanding you had the power to 21 do that? 22 A. Yes. 23 Q. And look at Section 8.5 at the top of the next 24 page. 25 A. Yes, that's the sale of the collateral.</p> |
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| <p>1 Q. -- 6.3 talks about disposition of assets. Do 2 you see that? 3 A. Yes. 4 Q. All right. According to your understanding, 5 could ACET Global do anything with these assets without 6 first getting your permission -- Super G's permission or 7 consent? 8 MR. FREEMAN: Objection, form. 9 A. You said Global could -- 10 MR. PERRIN: What's the nature of the 11 objection, Jason? 12 MR. FREEMAN: It's an improper question. 13 You're asking for anything. 14 MR. PERRIN: Thank you. 15 Q. (BY MR. PERRIN) Are you going to answer -- 16 MR. FREEMAN: It calls for a legal -- it 17 calls for a legal conclusion. 18 Q. (BY MR. PERRIN) Mr. Cole, did you have an 19 understanding of whether or not ACET Global could 20 dispose or do -- get rid of the assets in any way 21 without the consent or permission of Super G? 22 A. ACET Global required Super G's permission 23 other than what is deemed to be an ordinary course sale, 24 meaning the regular selling of inventory as it would in 25 an arms-length transaction to a customer at standard</p> | <p>1 Q. So this gave Super G the right to sell the 2 collateral, according to your understanding? 3 A. Yes. 4 Q. Would you look at Addendum 2. 5 MR. PERRIN: And Chase, that will be at 6 the bottom of the page. It says, "Supplement - Page 7 32." 8 A. I see it. 9 THE VIDEOGRAPHER: I'm sorry. The bottom 10 of which page? 11 MR. PERRIN: The bottom -- there's two 12 numbers at the bottom of the page. There's one for the 13 document, and then there's a stamp on there. It says, 14 "Supplement Page." It would be "Supplement- Page 31." 15 Q. (BY MR. PERRIN) If you go to the top of that 16 page, it's Addendum Conditions to Funding. Do you see 17 that, Mr. Cole? 18 A. Yes. 19 Q. If you look at A(3), A(3) requires a 20 "Collateral Assignment of Rights Under Acquisition 21 Transaction Documents and Subordination Agreement 22 between the Borrower and Lender and acknowledged by 23 Seller Parties." 24 Do you see that? 25 A. I do.</p> |

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| <p>1 Q. Why was that a condition to funding?</p> <p>2 A. It was a condition of funding because there</p> <p>3 were rights holders in the collateral, and Super G</p> <p>4 Capital's loan was conditioned on being senior secured</p> <p>5 first lien perfected in the assets. And so that was a</p> <p>6 condition to receive the capital, that Super G be</p> <p>7 secured first --</p> <p>8 Q. What -- excuse me. Are you through with</p> <p>9 your -- I'm sorry. Did I interrupt you, or are you</p> <p>10 through?</p> <p>11 A. That was for the collateral assignment. And</p> <p>12 the subordination agreement was a condition precedent</p> <p>13 because there was, as you know, a seller note which</p> <p>14 needed to be subordinated to Super G Capital's full</p> <p>15 collection of its loan and all obligations.</p> <p>16 Q. Why did Super G want the subordination</p> <p>17 agreement to be acknowledged by the seller parties?</p> <p>18 A. Adding the subordinated note holder as -- to</p> <p>19 the acknowledgment is deemed additional assurances, belt</p> <p>20 and suspenders, if you will, that the party understands</p> <p>21 that the senior lender will be paid in full before the</p> <p>22 subordinated lender is paid.</p> <p>23 Q. If you look at conditions of funding on the</p> <p>24 Addendum 2 at A, 5, it says, "Management Fee</p> <p>25 Subordination Agreement among Manager, Borrower and</p> | <p>1 A. Purpose of that provision is to assure that</p> <p>2 the business has adequate working capital to stay</p> <p>3 solvent.</p> <p>4 Q. Did ACET Global violate that financial</p> <p>5 covenant?</p> <p>6 A. They did.</p> <p>7 MR. PERRIN: Chase, can we now go to</p> <p>8 Plaintiff's Exhibit Number 9?</p> <p>9 Q. (BY MR. PERRIN) Do you have that in front of</p> <p>10 you, Mr. Cole?</p> <p>11 A. I do.</p> <p>12 Q. I'd ask you to turn to Page 42 of that</p> <p>13 agreement.</p> <p>14 A. Yes.</p> <p>15 Q. Is that your signature?</p> <p>16 A. It is.</p> <p>17 Q. And you were signing on behalf of Super G</p> <p>18 Capital?</p> <p>19 A. I did.</p> <p>20 Q. And on the prior page, can you tell me whose</p> <p>21 signature that was?</p> <p>22 A. David Hook.</p> <p>23 Q. On behalf of ACET Global?</p> <p>24 A. Yes.</p> <p>25 Q. If this collateral assignment had not been</p> |
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| <p>1 Lender." Why was that a condition to funding?</p> <p>2 A. I assume the management fee was being paid to</p> <p>3 the buyer, Baymark; and similar to the subordination</p> <p>4 agreement, it is imperative that the -- all parties,</p> <p>5 including the equity sponsor, understand that the senior</p> <p>6 lender will be paid in full before they are paid in the</p> <p>7 liquidation.</p> <p>8 Q. So according to your understanding of the</p> <p>9 agreement, nothing could be paid to the Baymark parties</p> <p>10 that were the buyer before your loan was paid off?</p> <p>11 A. In the liquidation. I would need to read the</p> <p>12 management fee agreement to understand if there were</p> <p>13 payments permitted on it during the amortization of the</p> <p>14 senior loan. But in a liquidation, those payments would</p> <p>15 be frozen.</p> <p>16 Q. Are you aware whether any management fees were</p> <p>17 ever paid by ACET Global?</p> <p>18 A. I'm not -- I don't recall.</p> <p>19 Q. If you look at Addendum 3, which is two more</p> <p>20 pages back. Under Addendum 3 of 1(a), it's a financial</p> <p>21 covenant that, "At all times the Borrower will maintain</p> <p>22 the aggregate sum of cash in its deposit accounts with</p> <p>23 the Bank other than the Escrow Account equal to no less</p> <p>24 than \$50,000."</p> <p>25 What was the purpose of that provision?</p> | <p>1 signed, would Super G have funded the loan?</p> <p>2 A. No.</p> <p>3 Q. Please take a look now at Defendants'</p> <p>4 Exhibit 1.</p> <p>5 (Defendant's Exhibit 1 marked.)</p> <p>6 Q. (BY MR. PERRIN) Do you have that in front of</p> <p>7 you?</p> <p>8 A. Let me confirm. I have some loose papers that</p> <p>9 I believe are Exhibit 1.</p> <p>10 Q. (BY MR. PERRIN) Look at the screen. This is</p> <p>11 what it's supposed to look like. It's the "Management</p> <p>12 Fee Subordination Agreement."</p> <p>13 A. Okay. All right. Found it.</p> <p>14 Q. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. If you look at the -- one, two, three, four,</p> <p>17 five -- sixth page of that marked BPOO1098.</p> <p>18 A. Yes.</p> <p>19 Q. And on the 198, that's signed on behalf of</p> <p>20 Baymark Management and ACET Global by whom?</p> <p>21 A. David Hook.</p> <p>22 Q. On the next page, is that your signature on</p> <p>23 behalf of Super G Capital?</p> <p>24 A. Yes, it is.</p> <p>25 Q. Is this a true and correct copy of the</p> |

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| <p>1 Management Fee Subordination Agreement?</p> <p>2 A. I believe it is.</p> <p>3 Q. I don't know if I asked you this about the</p> <p>4 Collateral Assignment Agreement, which was Defendants'</p> <p>5 Exhibit 9. Was that a true and correct copy of the</p> <p>6 Collateral Assignment that you signed?</p> <p>7 A. Yes, I believe so.</p> <p>8 Q. If you look at Defendants' Exhibit Number 2.</p> <p>9 A. Yes.</p> <p>10 (Defendant Exhibit 2 marked.)</p> <p>11 Q. (BY MR. PERRIN) This is entitled a "Pledge</p> <p>12 Agreement."</p> <p>13 A. Yes.</p> <p>14 Q. If you'd look at the -- at Page 10 of the</p> <p>15 Pledge Agreement. The first page is signed by David</p> <p>16 Hook on behalf of Baymark ACET Holdco.</p> <p>17 A. I see that.</p> <p>18 Q. Is that your signature -- on the second Page</p> <p>19 10 at Bates stamp 001110, is that your signature on the</p> <p>20 block for Super G Capital?</p> <p>21 A. Yes.</p> <p>22 Q. Is this a true and correct copy of the Pledge</p> <p>23 Agreement?</p> <p>24 A. I believe so.</p> <p>25 Q. If you turn to Exhibit 12, Defendants'</p> | <p>1 information." And the first section says, "Flow of</p> <p>2 funds into ACET Global at closing."</p> <p>3 MR. BLAKLEY: It's going to be the second</p> <p>4 attachment for you, Marc.</p> <p>5 THE WITNESS: I have it open on my</p> <p>6 screen.</p> <p>7 MR. PERRIN: Chase, have you found that?</p> <p>8 THE VIDEOGRAPHER: Sorry. I have not.</p> <p>9 That is -- that is what I have emailed to me labeled</p> <p>10 Defendant Exhibit 12.</p> <p>11 MR. PERRIN: What do you have as 13 then?</p> <p>12 THE VIDEOGRAPHER: One second.</p> <p>13 MR. PERRIN: All right. Let's -- for the</p> <p>14 record, we'll refer to this as Exhibit 13. It is a --</p> <p>15 A. Yes, I have it. I see it. It matches.</p> <p>16 (Defendant Exhibit 13 marked.)</p> <p>17 Q. (BY MR. PERRIN) And this is entitled at the</p> <p>18 top, "ACET acquisition wire instructions, account</p> <p>19 information in U.S. dollars."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And at the bottom of the page, it's Bates</p> <p>23 stamped BP008411?</p> <p>24 A. I'm in the spreadsheet.</p> <p>25 Q. Okay. Can you tell me how much money was</p> |
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| <p>1 Exhibit 12.</p> <p>2 (Defendant Exhibit 12 marked.)</p> <p>3 A. Excel spreadsheet.</p> <p>4 Q. (BY MR. PERRIN) See that document showing</p> <p>5 "Flow of Funds"?</p> <p>6 THE WITNESS: J.D., is this what you</p> <p>7 emailed me this morning?</p> <p>8 MR. BLAKLEY: This should be in your</p> <p>9 email box at 8:06 a.m. your time, should be.</p> <p>10 THE WITNESS: Okay. I'll work off the one</p> <p>11 on the screen.</p> <p>12 A. Yes, I see it.</p> <p>13 Q. (BY MR. PERRIN) No, you're looking at the</p> <p>14 wrong one. It's Exhibit 12, which is a screenshot.</p> <p>15 A. Yes, I see it.</p> <p>16 Q. That's not --</p> <p>17 MR. PERRIN: All right. Chase --</p> <p>18 THE VIDEOGRAPHER: I'm sorry. That's</p> <p>19 the -- that is not the right exhibit?</p> <p>20 MR. PERRIN: No. It's the one before this</p> <p>21 exhibit.</p> <p>22 THE WITNESS: I can pull it up from my</p> <p>23 email. Cash projection or flow of funds?</p> <p>24 MR. PERRIN: It should have at the top,</p> <p>25 "ACET acquisition wire instructions, account</p> | <p>1 flowed out of ACET Global at closing to the sellers?</p> <p>2 A. \$850,000.</p> <p>3 Q. Now, in your prior --</p> <p>4 MR. PERRIN: And Chase, that's fine. You</p> <p>5 can take down the exhibits for now.</p> <p>6 Q. (BY MR. PERRIN) Mr. Cole, earlier in your</p> <p>7 deposition, you stated this was a cash flow deal. What</p> <p>8 do you mean by this is a "cash flow deal"? What is</p> <p>9 that -- what is a "cash flow deal"?</p> <p>10 A. Cash flow deal is where the lender, in this</p> <p>11 case, Super G Capital, based its loan amount in part on</p> <p>12 the earnings of the business, both historical and its</p> <p>13 understanding of projected earnings, which would be used</p> <p>14 to amortize the loan.</p> <p>15 Q. And did you perform those projections in -- on</p> <p>16 this APA transaction?</p> <p>17 A. I personally did not.</p> <p>18 Q. I'm talking -- I'm taking your deposition as</p> <p>19 Super G.</p> <p>20 A. Yes.</p> <p>21 Q. Did Super G make any determination as to</p> <p>22 whether or not this loan and this amortization schedule</p> <p>23 could be paid by ACET Global?</p> <p>24 A. Yes.</p> <p>25 Q. On paper, was it strong or weak?</p> |

7 (Pages 227 to 230)

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| <p>1 A. On paper, the debt service coverage ratio was 2 over two times, which is considered strong. 3 Q. And the cash flow is based upon the prior 4 earnings of the company or not? 5 A. Super G Capital used an adjusted EBITDA as a 6 proxy for cash flow. Yes, up -- including the prior 7 periods and the trailing 12-month period. 8 Q. And if the adjusted EBITDA is overstated, 9 would that result in you making a larger loan than maybe 10 could have been accommodated or paid? 11 A. Yes. 12 Q. Now, in this case, after the closing, did ACET 13 Global ever come close to approximating those type of 14 cash flow numbers that you relied upon in making this 15 deal? 16 MR. FREEMAN: Objection, form. 17 Q. (BY MR. PERRIN) Go ahead, Mr. Cole. You can 18 answer that. 19 A. No, it did not. 20 Q. Do you have any opinion as to how accurate the 21 cash flow numbers were that you relied upon? 22 MR. FREEMAN: Objection, form. 23 A. My opinion is they were significantly 24 inaccurate. They were significantly overstated. 25 Q. (BY MR. PERRIN) So let me ask you again.</p> | <p>1 Q. And that would be what type of portion -- and 2 how would that consideration be calculated? 3 A. It's negotiated between the buyer and the 4 seller. It is a function of the demand for the 5 acquisition. Sellers want as much money up front as 6 possible, and buyers want to structure their cash out 7 the door to protect themselves. And lenders, in this 8 case, are focused on the company having sufficient cash 9 flow to repay the senior lender. And those three 10 parties either can find an acceptable solution, or 11 there's no transaction. 12 Q. If a seller's note is based on cash flow, what 13 relationship does the value of that note have to do with 14 the value of the assets of the company? 15 A. It's difficult for me to answer that question. 16 I believe, in this case, the seller note was not a 17 performance-based earn-out. I'm not that close to the 18 Asset Purchase Agreement. I believe this -- 19 Q. We went -- go ahead. I'm sorry. Are you -- 20 A. I believe the seller note was -- the payments 21 on the seller note were governed by the senior lender, 22 in this case, Super G Capital's ability to receive its 23 full payments of principal and interest. 24 Q. We went over the subordination of the seller 25 note. Is that a fairly standard practice in these type</p> |
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| <p>1 First of all, do you have an opinion as to whether or 2 not those cash flow numbers provided by the seller were 3 overstated? Just let me know yes or no, and then I'll 4 ask you your opinion. 5 A. Could you repeat the question? 6 Q. Do you have an opinion as to whether or not 7 the cash flow numbers provided by the seller were 8 overstated? 9 A. Yes, I have an opinion. 10 Q. And what is that opinion? 11 A. That those numbers were overstated. 12 Q. Significantly? 13 MR. FREEMAN: Objection, form. 14 A. Yes, in my opinion. 15 Q. (BY MR. PERRIN) Overstated by how much? 16 MR. FREEMAN: Objection, form. 17 A. I'm not sure. 18 Q. (BY MR. PERRIN) And in a transaction like 19 this, is the seller note -- how would a seller note be 20 determined in a transaction like this? 21 A. Could you ask the question a different way? 22 Q. Yeah. When you have a cash flow deal, what 23 normally does the seller's note represent? 24 A. A portion of the acquisition consideration not 25 paid at closing.</p> | <p>1 of transactions? 2 A. Completely standard. 3 Q. And in this case, according to your 4 understanding, the seller walked away from closing with 5 over \$800,000? 6 A. Yes. 7 Q. Did anyone else receive any money from that 8 transaction and walk away with that? 9 MR. FREEMAN: Objection, form. 10 A. I don't see anyone else in the sources and 11 uses receiving money other than a loan was paid off, 12 which would also presumably benefit the seller. 13 Q. (BY MR. PERRIN) How much money did Baymark 14 ACET Holdco put into this transaction at the closing? 15 A. \$400,000. 16 Q. And y'all put in 750? 17 A. Thousand dollars, correct. 18 Q. To the best of your knowledge, who was the 19 only person who walked away with cash in this closing 20 transaction? 21 A. The seller. 22 Q. All right. After the closing, were there any 23 problems with the performance of ACET Global? 24 A. Yes. 25 Q. What type of problems?</p> |

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| <p>1 A. While my memory of the events is not 2 particularly useful, my notes show that the loan needed 3 to be amended fairly quickly, and there was an amendment 4 in December of 2017 reducing the payment due to the 5 company's insufficient cash flow. 6 MR. FREEMAN: Objection, form of the 7 prior question. 8 Q. (BY MR. PERRIN) Turn to Exhibit -- 9 Defendants' Exhibit 6. 10 (Exhibit 6 marked.) 11 A. I see an email. 12 Q. (BY MR. PERRIN) All right. Could you take a 13 look at that and tell me what that is? 14 MR. FREEMAN: Hey, Ed, have you provided 15 us a copy of these marked exhibits you've got? 16 MR. PERRIN: Sure have. 17 MR. FREEMAN: I don't think we've got 18 them marked like this. 19 MR. PERRIN: I sent them to Karen like 20 that, and copied everybody on it. She asked me to do 21 so. I did so. 22 MR. FREEMAN: Do y'all mind -- do you 23 mind shooting us a copy of these? 24 MR. PERRIN: Karen, can you shoot him what 25 I sent to everybody or --</p> | <p>1 Q. Can you tell us what that is? 2 A. It's an email from Super G Capital's employee, 3 Steve Bellah, to the Baymark team describing a 4 conversation around support for the company and making a 5 recommendation for a partial restructuring of the Super 6 G Capital loan. 7 Q. Now, when you previously discussed that it had 8 to be amended in December of 2017, is this what you were 9 referring to? 10 A. Yes. 11 Q. And in the first paragraph, it talks about, at 12 the end, about the efforts of Lux 214, which Mr. Bellah 13 also viewed as an endorsement from ownership that you 14 were willing to invest in the continued development of 15 the company. Was it your understanding that the Baymark 16 parties were willing to do so? 17 A. I'm not familiar with Lux 214. 18 Q. Well, in the second paragraph, it talks about 19 demonstrating their optimism with more financial support 20 for the company. Do you see that? 21 A. I do. 22 Q. Was it your understanding that the principals 23 of Baymark ACET Holdco were willing to contribute more 24 capital? 25 MR. FREEMAN: Objection, form.</p> |
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| <p>1 THE REPORTER: Sure. If we can go off the 2 record for a moment. 3 MR. PERRIN: Yeah, let's go off the record 4 for a minute. 5 (Break taken from 11:02 a.m. to 6 11:02 a.m.) 7 MR. PERRIN: J.D., would you please 8 recite for the record what you found with respect to the 9 email requested about the Defendant's exhibits being 10 provided to the court reporter and counsel of record? 11 MR. BLAKLEY: Yeah. One second. I am 12 looking at an email from Tuesday, March 30th at 13 3:46 p.m. from Stacey Goldfarb at Hallett & Perrin to 14 Ms. Usher, the court reporter, copying Woods, Brenda 15 Hard-Wilson, Ed Perrin, Jennifer Poe, Jason Freeman, 16 Mr. Silvestre, me and a jessica@freemanlaw.com, with a 17 Citrix attachment with 13 marked Defendant deposition 18 exhibits. 19 MR. PERRIN: Thank you. 20 Q. (BY MR. PERRIN) With respect to -- now, if 21 you turn to Exhibit 6, Defendants' Exhibit 6. Do you 22 have that in front of you, Mr. Cole? 23 A. I do. 24 Q. Have you had a chance to review that? 25 A. I just did.</p> | <p>1 A. I understand from this email that Super G 2 Capital's support for the company was predicated on 3 Baymark putting in more capital, more equity. 4 Q. (BY MR. PERRIN) And did Baymark do so? 5 A. Yes. 6 Q. And what was the amount they put in at this 7 time? 8 A. It's difficult to tell from this email. I 9 would need to see the -- I believe the loan was amended, 10 and I could -- okay. I see the loan was amended. If 11 you don't mind me skipping to Exhibit 8 -- no, that's a 12 different amendment. I'm not sure whether we went with 13 what is labeled Scenario 1 or Scenario 2. 14 Q. Well, I'll tell you what. Take a look at 15 Defendants' Exhibit 3. 16 (Defendant Exhibit 3 marked.) 17 A. Here's the amendment. 18 Q. (BY MR. PERRIN) Can you tell us what 19 Exhibit 3 is? 20 A. Exhibit 3 is the first amendment to the loan 21 agreement which was entered on December 27, 2017. 22 Q. And if you look at the signature page on that, 23 Bates stamp BP001437, is that your signature? 24 A. Yes. 25 Q. Is this a true and correct copy of amendment 1</p> |

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| <p>1 to loan agreement?</p> <p>2 A. Yes, I believe so.</p> <p>3 Q. And part of the consideration for that loan</p> <p>4 agreement was Baymark ACET Holdco putting in an</p> <p>5 additional \$50,000?</p> <p>6 A. That would likely be captured in this</p> <p>7 amendment, and I'm looking for the language.</p> <p>8 MR. FREEMAN: Objection, form.</p> <p>9 A. My understanding from the email correspondence</p> <p>10 was that Super G Capital was conditioning the amendment</p> <p>11 on an equity contribution. A properly documented</p> <p>12 amendment would have stated that contribution in</p> <p>13 Section 3, "Conditions Precedent." But I don't see that</p> <p>14 here, so I'm not sure what was agreed to or what was</p> <p>15 contributed to the company.</p> <p>16 Q. (BY MR. PERRIN) If you'd look at the second</p> <p>17 page of that amendment number 1, it shows the payment</p> <p>18 amounts. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And so at this point -- this loan was about 22</p> <p>21 weeks in -- had ACET Global been making their \$15,000 a</p> <p>22 week payments timely up until this time?</p> <p>23 A. My belief is that it had.</p> <p>24 Q. And then under this amendment, it was going to</p> <p>25 reduce the weekly payments for the next 12 weeks to</p> | <p>1 Q. (BY MR. PERRIN) I couldn't hear your answer,</p> <p>2 Mr. Cole.</p> <p>3 A. No.</p> <p>4 Q. At the time of the APA transaction negotiation</p> <p>5 and closing, were you aware of any discussion or</p> <p>6 indication or any preconceived plan to start another</p> <p>7 business with ACET Global's assets?</p> <p>8 MR. FREEMAN: Objection, form.</p> <p>9 A. No.</p> <p>10 Q. (BY MR. PERRIN) If there had been any</p> <p>11 indication of any kind to you of any of the foregoing,</p> <p>12 would you have -- would Super G have funded their loan?</p> <p>13 A. No.</p> <p>14 MR. FREEMAN: Objection, form.</p> <p>15 Q. (BY MR. PERRIN) All right. Let's turn back</p> <p>16 to the nature of the troubles that the company was</p> <p>17 having after the closing. You first indicated that</p> <p>18 there were problems which led to the first amendment.</p> <p>19 Do you know of about any operational problems with the</p> <p>20 company that led to that?</p> <p>21 A. I don't recall them.</p> <p>22 Q. You just knew it wasn't performing the way it</p> <p>23 was reflected in the historical numbers?</p> <p>24 A. Correct.</p> <p>25 Q. Ask you to take a look -- so we looked at</p> |
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| <p>1 \$7500?</p> <p>2 A. Which appears to be the 50 percent reduction</p> <p>3 described in the email, yes.</p> <p>4 Q. And then after that, it would go back up to</p> <p>5 15,000 a week?</p> <p>6 A. Yes.</p> <p>7 Q. Now, leave a bookmark here, and I'll come back</p> <p>8 to this. But going back -- I want to take you back to</p> <p>9 at the time the APA transaction was negotiated and</p> <p>10 signed. Okay?</p> <p>11 A. Yes.</p> <p>12 Q. At the time the APA agreement was negotiated</p> <p>13 and signed, was it ever indicated to you that there was</p> <p>14 any intent or plan to run ACET Global in such a way that</p> <p>15 it would fail?</p> <p>16 A. No.</p> <p>17 Q. If there had been, would you have put any</p> <p>18 money into this?</p> <p>19 A. Absolutely not.</p> <p>20 Q. At the time of the -- at the negotiation and</p> <p>21 closing of the APA transaction, was there ever any</p> <p>22 discussion or intent, to your knowledge, that -- to</p> <p>23 drain ACET Holdco of all of its assets?</p> <p>24 MR. FREEMAN: Objection, form.</p> <p>25 A. No.</p> | <p>1 Exhibit 6, which was the email. If you'd take a look at</p> <p>2 Exhibit 6 again, Defendants' Exhibit 6, December 20,</p> <p>3 2017 email.</p> <p>4 A. Yes.</p> <p>5 Q. You see the subject? It says, "re: ACET</p> <p>6 Detailed Cash Projection." Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. I'm going to ask you to take a look at</p> <p>9 Defendants' Exhibit 7.</p> <p>10 (Defendant Exhibit 7 marked.)</p> <p>11 A. The spreadsheet?</p> <p>12 Q. (BY MR. PERRIN) Yes. Is that the spreadsheet</p> <p>13 that was attached to this email?</p> <p>14 THE WITNESS: J.D., is that cash</p> <p>15 projection BP005948?</p> <p>16 MR. BLAKLEY: Yep. Should be the first</p> <p>17 attachment on that email I sent you.</p> <p>18 A. Okay. I have it open.</p> <p>19 Q. (BY MR. PERRIN) So you see those cash</p> <p>20 projections?</p> <p>21 A. I see -- make sure I'm on the right tab.</p> <p>22 Processing. Heavy file; processing.</p> <p>23 Q. Let me just ask you to look at the screen</p> <p>24 right now, if you would.</p> <p>25 A. Okay.</p> |

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| <p style="text-align: right;">Page 243</p> <p>1 Q. The first page shows a breakdown of 2014, 2 2015, 2016, and then December of 2017. Was it your 3 understanding that was through December 2017 for those 4 numbers? 5 A. Yes. 6 Q. If you turn to the next page -- or look at the 7 next page, at the bottom of the December 17th -- or 8 December 2017 column, what does it show the net income 9 for the company in 2017? 10 A. Could you scroll up once more? I looked away. 11 2017 is the right-most column? 12 Q. Yes. 13 A. Okay. 14 MR. PERRIN: And scroll down again, Chase. 15 A. It shows a net loss of \$388,000 and change. 16 Q. (BY MR. PERRIN) There are a number of tabs 17 attached to these projections, are there not? 18 A. There are. 19 Q. And, sir, is this type of discussion and 20 exchange of information consistent with trying to make 21 this deal work, in your mind? 22 A. Could you ask the question differently? 23 Q. Okay. If someone intended just to let ACET 24 Global fail, would it make sense to go through this 25 extensive modeling and projection exercise?</p> | <p style="text-align: right;">Page 245</p> <p>1 A. David Hook. 2 Q. Is this a true and correct copy of the 3 Forbearance Agreement? 4 A. Yes, I believe it is. 5 Q. Now, this was less than four months after the 6 first amendment. What led to the Forbearance Agreement, 7 to your understanding? 8 A. The company's inability to meet its 9 obligations of debt service to Super G Capital and 10 minimum cash balance. 11 Q. The minimum cash balance being what? 12 A. \$50,000. 13 Q. And some of these facts are recited in the 14 Forbearance Agreement? 15 A. Yes, I see them. 16 Q. And in "Recitals of Fact," under C, it says 17 that, "The borrower failed to make weekly payments of 18 \$15,000 due on March 22nd, 2018, and March 29th, 2018." 19 Do you see that? 20 A. I do. 21 Q. Is that a correct statement? 22 A. It is. 23 Q. And then in D, it talks about that the 24 borrower failed to maintain cash in deposit accounts 25 with its bank other than the escrow account of the</p> |
| <p style="text-align: right;">Page 244</p> <p>1 A. I've never been part of a transaction 2 across -- 3 MR. FREEMAN: Objection, form. 4 A. -- hundreds of transactions where any party 5 has intentionally let a business fail. 6 Q. (BY MR. PERRIN) In your opinion, was there 7 any intent or plan in this case to let ACET Global's 8 business fail? 9 MR. FREEMAN: Objection, form. 10 A. No. Both the lender and the equity investor 11 were contributing further capital at this time. 12 Q. (BY MR. PERRIN) If you'd turn to Defendants' 13 Exhibit Number 8. 14 A. "Forbearance Agreement." 15 Q. Do you see that? 16 A. I do. 17 Q. It's dated April 12th, 2018? 18 A. Yes. 19 Q. And if you'd turn to the signature page at 20 BP006112. 21 A. I see it. 22 Q. Is that your signature under "Super G 23 Capital"? 24 A. It is. 25 Q. And who signed on behalf of ACET Global?</p> | <p style="text-align: right;">Page 246</p> <p>1 \$50,000 you talked about? 2 A. Yes. 3 Q. And so what did Super G agree to do to forbear 4 on its rights in return for action by ACET Global? 5 A. In Section 6, Super G further lowered its loan 6 payments to \$5,000 a week for a specified period of time 7 such that those payments would then increase. 8 Q. Did it require -- go ahead. 9 A. And there was -- and furthermore, Super G 10 required -- it looks like it's 6(b), further cash 11 investment in the company of \$30,000. I would expect to 12 see a fee or a penalty, but I don't see one here. 13 Q. Does this Forbearance Agreement indicate to 14 you the willingness of ACET Global to try to move 15 forward with this loan? 16 A. It does. 17 Q. Does -- would you expect someone who is trying 18 to make ACET Global fail to enter any such type of 19 agreement? 20 MR. FREEMAN: Objection, form. 21 A. I don't know how to answer that other than the 22 sponsors continued to put cash into the company. 23 MR. FREEMAN: Objection, nonresponsive. 24 Q. (BY MR. PERRIN) Well, let me ask you this 25 way. Mr. Cole, did the sponsors continue to put cash in</p> |

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| <p>1 the company?</p> <p>2 A. They did.</p> <p>3 Q. And what did that indicate to you?</p> <p>4 MR. FREEMAN: Objection, form.</p> <p>5 A. Support for the business.</p> <p>6 Q. (BY MR. PERRIN) Excuse me. I couldn't hear</p> <p>7 your answer, Mr. Cole.</p> <p>8 A. Support for the business.</p> <p>9 Q. Let's turn to Defendants' Exhibit 9.</p> <p>10 (Defendant Exhibit 9 marked.)</p> <p>11 Q. (BY MR. PERRIN) This is an email dated</p> <p>12 July 2nd, 2018, from Mr. Bellah to Tony Ludlow and Matt</p> <p>13 Denegre regarding restructured amortization. Can you</p> <p>14 tell us what you understand about any restructured</p> <p>15 amortization around July 2nd, 2018?</p> <p>16 A. My interpretation of this email is the company</p> <p>17 is on life support at this point. The original \$15,000</p> <p>18 payment, which was taken down to 7500, and then down</p> <p>19 further, is now down to \$1,000. And if the investors</p> <p>20 were to put in capital, then Super G would go down to</p> <p>21 what is truly a nominal payment on the loan of \$500.</p> <p>22 Q. And the sponsors continuing to put money in</p> <p>23 indicated what to you?</p> <p>24 A. Further support.</p> <p>25 Q. Would it indicate to you in any way that they</p> | <p>1 the creditors in the zone of insolvency. And plans were</p> <p>2 clearly discussed as to how to preserve all</p> <p>3 stakeholders' claims here.</p> <p>4 Q. (BY MR. PERRIN) And what plans were</p> <p>5 discussed?</p> <p>6 A. From the review of the exhibits, there were</p> <p>7 wind-down plans. There were restructuring plans. And</p> <p>8 ultimately, a foreclosure was deemed by Super G to be</p> <p>9 the best option.</p> <p>10 Q. Whose decision was that to make?</p> <p>11 A. Super G Capital decided to do the foreclosure,</p> <p>12 so that decision was Super G's alone.</p> <p>13 Q. Look at Defendants' Exhibit 10.</p> <p>14 (Defendant Exhibit 10 marked.)</p> <p>15 A. I see an email.</p> <p>16 Q. (BY MR. PERRIN) Attachments to that email, do</p> <p>17 you recognize that?</p> <p>18 A. I recognize that, at this point, Super G,</p> <p>19 principally, Steve Bellah, was having discussions with</p> <p>20 Baymark as to various paths forward to preserve value;</p> <p>21 but I'm not familiar with the details of it.</p> <p>22 Q. And this was talking about a plan to</p> <p>23 restructure ACET Global or some other entity?</p> <p>24 A. It's called "The ACET Plan." It appears to</p> <p>25 be -- to be what it is, what it's labeled, a plan for</p> |
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| <p>1 wanted the business to fail?</p> <p>2 MR. FREEMAN: Objection, form.</p> <p>3 A. No.</p> <p>4 Q. (BY MR. PERRIN) Was this new payment schedule</p> <p>5 complied with?</p> <p>6 A. This was an email agreement as of July. And</p> <p>7 from my notes, I believe it was not because I have a</p> <p>8 notation about needing a further amendment in October,</p> <p>9 and clearly, a foreclosure in January. So I believe --</p> <p>10 I recall some payments were made, but I believe this</p> <p>11 was -- this, to me, indicates a company on life support,</p> <p>12 and I think that's what happened.</p> <p>13 Q. And what do you recall about needing a further</p> <p>14 amendment in October with respect to the ACET Global</p> <p>15 loan?</p> <p>16 A. I would be speculating as to my memory at the</p> <p>17 time, but --</p> <p>18 Q. I'm asking you -- I'll ask you today, as a</p> <p>19 representative of Super G, what were the reasons for the</p> <p>20 possible need for a further amendment in October?</p> <p>21 MR. FREEMAN: Objection, form.</p> <p>22 A. The company was unable to make any acceptable</p> <p>23 debt service on the loan. The company was insolvent by</p> <p>24 any reasonable standard, which means the company needs</p> <p>25 to be run for the benefit of all shareholders, including</p> | <p>1 ACET.</p> <p>2 Q. A restructure plan for ACET Global?</p> <p>3 A. Yes.</p> <p>4 Q. And then if you look at Defendants'</p> <p>5 Exhibit 11.</p> <p>6 (Defendant Exhibit 11 marked.)</p> <p>7 A. Wind-down plan.</p> <p>8 Q. Did Super G request a wind-down plan from ACET</p> <p>9 Global?</p> <p>10 A. I don't recall requesting it. I certainly</p> <p>11 would have in a liquidation scenario. That's</p> <p>12 always a -- it's always an appropriate scenario to</p> <p>13 review.</p> <p>14 Q. Was Super G willing to put any more money into</p> <p>15 ACET Global in September of 2018?</p> <p>16 A. I can't answer that for specifically the month</p> <p>17 of September. I can tell from the options that money</p> <p>18 was needed.</p> <p>19 MR. FREEMAN: Objection, form.</p> <p>20 Q. (BY MR. PERRIN) Was it your understanding in</p> <p>21 September of 2018 that Super G and ACET Global were in</p> <p>22 discussions about restructuring?</p> <p>23 A. Yes.</p> <p>24 Q. And what was your understanding of those</p> <p>25 restructuring discussions?</p> |

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| <p>1 A. Well, I recall my initial position was that</p> <p>2 Super G was not going to contribute any additional</p> <p>3 capital, and that either Baymark or the new CEO could</p> <p>4 contribute capital. On the other hand, I was looking to</p> <p>5 mitigate a significant principal loss for Super G.</p> <p>6 Q. And how did you -- how did Super G determine</p> <p>7 to do that?</p> <p>8 A. Well, I don't know the month that the decision</p> <p>9 was made. But ultimately, selecting between bad</p> <p>10 options, I chose incorrectly; and we, in fact,</p> <p>11 contributed capital to the foreclosure and the restart</p> <p>12 plan.</p> <p>13 Q. And was that restart plan in another entity?</p> <p>14 A. It appears to have been in Windspeed Trading.</p> <p>15 Q. And why would you contribute that money to</p> <p>16 Windspeed Trading and not to ACET Global?</p> <p>17 A. I don't know the decision-making at the time</p> <p>18 between entities. I know that it's -- that's the path</p> <p>19 that was chosen based on what appeared to be the best</p> <p>20 option for Super G.</p> <p>21 Q. Would Super G want any money it contributed to</p> <p>22 be used to pay the seller note?</p> <p>23 A. No.</p> <p>24 Q. Now --</p> <p>25 A. The company was in -- was insolvent.</p> | <p>1 contribute labor and be helpful in the venture and that</p> <p>2 they would receive an equity stake for their</p> <p>3 contribution of labor.</p> <p>4 Q. So Baymark principals offered to lend support</p> <p>5 and expertise, and in return, you gave -- you had them</p> <p>6 be given a warrant?</p> <p>7 A. Yes.</p> <p>8 Q. Then Windspeed moved forward at that point.</p> <p>9 Did -- had Mr. Bill Szeto -- did the company -- did</p> <p>10 Super G have confidence in Bill Szeto at the time?</p> <p>11 A. We had -- we appreciated that our equity --</p> <p>12 again, I use the term "sponsor," and that's how lenders</p> <p>13 view the role of private equity groups -- that the</p> <p>14 sponsor brought a solution to the table, and the</p> <p>15 solution was a CEO, and that that CEO, as we discussed</p> <p>16 in my prior deposition, had a track record of success</p> <p>17 before him. So it wasn't so much that we -- we did not</p> <p>18 recruit Bill Szeto as much as Baymark did, which was, in</p> <p>19 our minds, part of their support for the company,</p> <p>20 because we did not intend to operate the business.</p> <p>21 Q. Were you aware whether the options of ACET</p> <p>22 Global were shut down?</p> <p>23 A. I'm not aware.</p> <p>24 Q. Did you give any directions -- did Super G</p> <p>25 give any directions to Bill Szeto about the handling of</p> |
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| <p>1 Q. If you'd look at Defendants' Exhibit 4.</p> <p>2 (Defendant Exhibit 4 marked.)</p> <p>3 Q. (BY MR. PERRIN) Can you -- wait a minute.</p> <p>4 Let me -- yeah, Defendants' Exhibit 4. Can you tell us</p> <p>5 what that is?</p> <p>6 A. It's a loan agreement between Super G Capital</p> <p>7 and Windspeed Trading for \$200,000 in October of 2018.</p> <p>8 Q. And was this the option of all the bad options</p> <p>9 that was chosen by Super G?</p> <p>10 A. Yes.</p> <p>11 Q. Did Super G require any concessions or</p> <p>12 conditions to put that money into Windspeed?</p> <p>13 A. Yes.</p> <p>14 Q. What did it require?</p> <p>15 A. It required all of the economics associated</p> <p>16 with this loan. And it required a security to</p> <p>17 participate in Windspeed's success if it were -- if the</p> <p>18 loans were repaid and Windspeed was successful.</p> <p>19 Q. What security are you referring to?</p> <p>20 A. The warrant in Windspeed Trading.</p> <p>21 Q. Did you and Super G request any conditions or</p> <p>22 concessions with respect to any of the Baymark parties?</p> <p>23 A. Well, I unsuccessfully demanded that they</p> <p>24 participate in the funding of Windspeed, and they</p> <p>25 refused. And they instead offered to be -- to</p> | <p>1 ACET collateral before the foreclosure?</p> <p>2 A. No.</p> <p>3 Q. When you -- did Super G ultimately decide to</p> <p>4 foreclose on and take the collateral from ACET Global?</p> <p>5 A. Yes.</p> <p>6 Q. Please take a look at Exhibit 17.</p> <p>7 A. In the defendant's?</p> <p>8 Q. Plaintiff's Exhibit 17. I'm sorry.</p> <p>9 MR. FREEMAN: Hey, Ed, how much longer</p> <p>10 you got?</p> <p>11 MR. PERRIN: I think about 15 minutes.</p> <p>12 MR. FREEMAN: Okay.</p> <p>13 A. I see the notice of foreclosure.</p> <p>14 MR. PERRIN: And I'm looking at my notes.</p> <p>15 It may be a little bit longer than that, Jason, but I'll</p> <p>16 try to move it as quick as I can.</p> <p>17 Q. (BY MR. PERRIN) Did you find that</p> <p>18 foreclosure, Exhibit 17?</p> <p>19 A. Yes.</p> <p>20 Q. If you look at -- that's a foreclosure notice</p> <p>21 dated January 31, 2019. Is that your signature on the</p> <p>22 second page?</p> <p>23 A. Yes.</p> <p>24 Q. Did Super G also send a copy of this letter to</p> <p>25 Mr. Tomer Damti?</p> |

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| <p>1 A. Yes.</p> <p>2 Q. Did Mr. Damti ever make any offer to Super G</p> <p>3 to purchase any of the collateral?</p> <p>4 A. He did not.</p> <p>5 Q. Did he ever even contact Super G about it?</p> <p>6 A. No.</p> <p>7 Q. You previously, in your deposition, described</p> <p>8 the foreclosure under Article IX of the UCC, and I don't</p> <p>9 want to go back into that. In doing that, though, you</p> <p>10 mentioned "friendly foreclosure." Can you tell us what</p> <p>11 "friendly foreclosures" are?</p> <p>12 A. It's not a legal term, but it's my description</p> <p>13 for a foreclosure process where the other parties,</p> <p>14 including the equity investors, agree it is in</p> <p>15 everybody's best interest and cooperate in the</p> <p>16 foreclosure process.</p> <p>17 Q. Have you ever done a friendly foreclosure</p> <p>18 before at Super G?</p> <p>19 A. I have.</p> <p>20 Q. Have you done any other Article IX or other</p> <p>21 foreclosures at Super G?</p> <p>22 A. I'm not entirely sure. I have certainly</p> <p>23 done -- we've used the judicial process, but I'm not</p> <p>24 aware of a -- of a -- of an additional foreclosure.</p> <p>25 Q. So after the foreclosure by Super G, who owned</p> | <p>1 Judgment - Page 87" on it, do you see who signed for</p> <p>2 Windspeed Trading?</p> <p>3 A. William Szeto.</p> <p>4 Q. And the footer on that signature page says,</p> <p>5 "Asset Purchase Agreement"?</p> <p>6 A. Yes.</p> <p>7 MR. PERRIN: Thank you, Chase. Let's go</p> <p>8 to the next page.</p> <p>9 Q. (BY MR. PERRIN) On that next page, where --</p> <p>10 under "Super G Capital," is that your signature?</p> <p>11 A. Yes.</p> <p>12 Q. And that says, "Signature page - Asset</p> <p>13 Purchase Agreement," also?</p> <p>14 A. Yes.</p> <p>15 Q. If you turn back three pages, the remainder of</p> <p>16 that document has "Foreclosure Sale Agreement" with a</p> <p>17 page number on it. Do you see that?</p> <p>18 A. I see it.</p> <p>19 Q. It goes all the way to the first page, doesn't</p> <p>20 it?</p> <p>21 A. Yes.</p> <p>22 Q. Did Super G ever sell or purchase any other</p> <p>23 assets with Windspeed other than this Foreclosure Sale</p> <p>24 Agreement?</p> <p>25 A. Not to my knowledge.</p> |
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| <p>1 that property that was foreclosed upon?</p> <p>2 A. Super G Capital.</p> <p>3 Q. What could you do with it?</p> <p>4 A. Whatever the lender or Super G had intended.</p> <p>5 Could use it; could sell it.</p> <p>6 Q. Could he keep it?</p> <p>7 A. Could keep it.</p> <p>8 Q. Why did Super G sell it to Windspeed?</p> <p>9 A. Super G is not in the commerce business or any</p> <p>10 operating business. It was in the loan business, and</p> <p>11 Super G wanted to recover its loans.</p> <p>12 Q. Did Super G feel that moving forward through</p> <p>13 Windspeed was the best way to do so?</p> <p>14 A. It was the best of bad options.</p> <p>15 Q. If you'd turn to Plaintiff's Exhibit 15.</p> <p>16 A. Yes.</p> <p>17 Q. This is a "Foreclosure Sale Agreement" you</p> <p>18 previously identified?</p> <p>19 A. Yes.</p> <p>20 Q. Now, I'd ask you to take a look at the 14th</p> <p>21 and 15th pages of that document. There's a Bates stamp</p> <p>22 at the bottom going -- "Motion for Summary Judgment,"</p> <p>23 Page 87 and Page 88. Do you see those?</p> <p>24 A. I see signatures, yes.</p> <p>25 Q. On the one that has "Motion For Summary</p> | <p>1 Q. When you signed this Foreclosure Sale</p> <p>2 Agreement on the signature page saying "Asset Purchase</p> <p>3 Agreement," was it your intent at that time to be</p> <p>4 signing the Foreclosure Sale Agreement?</p> <p>5 A. Yes.</p> <p>6 Q. Was it your intention in signing that to</p> <p>7 effect that transaction?</p> <p>8 A. Yes.</p> <p>9 Q. If you look at -- after your signature page,</p> <p>10 you have an Exhibit A. This document references an</p> <p>11 Exhibit A, a "Bill of Sale."</p> <p>12 A. Yes.</p> <p>13 Q. It also references Exhibit B, an "Assignment</p> <p>14 and Assumption Agreement." That would be the Motion For</p> <p>15 Summary Judgment, Page 104.</p> <p>16 A. I see it.</p> <p>17 Q. So it references that's going to be another</p> <p>18 document signed under this Foreclosure Sale Agreement?</p> <p>19 Is that correct?</p> <p>20 A. The version I have is unsigned.</p> <p>21 Q. This is just the attachment at this point?</p> <p>22 A. Yes.</p> <p>23 Q. These are attachments to the Foreclosure Sale</p> <p>24 Agreement saying these are going to be additional</p> <p>25 documents that are executed under this agreement; is</p> |

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| <p>1 that correct?</p> <p>2 A. Yes, these are the forms. Yes, I see that.</p> <p>3 Q. And the third form is Exhibit C, the form of</p> <p>4 the Amended Loan Agreement?</p> <p>5 A. Yes.</p> <p>6 Q. And these were all part of the Foreclosure</p> <p>7 Sale Agreement, correct?</p> <p>8 A. Yes.</p> <p>9 Q. All right. If you turn to Plaintiff's</p> <p>10 Exhibit 7.</p> <p>11 THE REPORTER: Ed, I don't have a</p> <p>12 Plaintiff's Exhibit 7. I have 5, 8, 9, 15, 17, 23.</p> <p>13 MR. PERRIN: Karen, the file delivered to</p> <p>14 all of us had 1 through 22.</p> <p>15 THE REPORTER: All right. Give me just a</p> <p>16 moment.</p> <p>17 MR. FREEMAN: Do y'all want to take five</p> <p>18 minutes?</p> <p>19 MR. PERRIN: That works. Let's do it.</p> <p>20 (Break taken from 11:41 a.m. to</p> <p>21 11:51 a.m.)</p> <p>22 MR. FREEMAN: Just real quick, on the</p> <p>23 record, Mr. Blakley, there are a few exhibits it looks</p> <p>24 like we're about to go into. I understand that you had</p> <p>25 a copy of those, and that I had previously circulated</p> | <p>1 MR. PERRIN: I'm sorry, Chase. How about</p> <p>2 Defendant's -- Plaintiff's Exhibit 7. I'm sorry.</p> <p>3 Q. (BY MR. PERRIN) There we go. Now, just to</p> <p>4 clarify, Mr. Cole, will you turn to the third page of</p> <p>5 that, the signature page? That's your signature for</p> <p>6 Super G Capital?</p> <p>7 A. Yes, it is.</p> <p>8 Q. And Bill of Sale dated March 1, 2019?</p> <p>9 A. Yes.</p> <p>10 Q. And this is a true and correct copy of the</p> <p>11 Bill of Sale signed by you?</p> <p>12 A. I believe it is.</p> <p>13 Q. All right. Let's look at Plaintiff's</p> <p>14 Exhibit 4. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And is this the -- well, can you tell us what</p> <p>17 this is?</p> <p>18 A. Super G Capital sold the ACET collateral to</p> <p>19 Windspeed Trading for the assignment of this note. The</p> <p>20 note says "514,144.86." I believe that was a typo</p> <p>21 because the foreclosure agreement was listed as</p> <p>22 516,144.86. But, in any case, that's what this is.</p> <p>23 It's -- it is Windspeed assuming both the -- the</p> <p>24 liability to Super G Capital.</p> <p>25 Q. And if you'd look at the top -- at the</p> |
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| <p>1 those to all counsel; is that correct?</p> <p>2 MR. BLAKLEY: That's correct. Ryan Dean</p> <p>3 out of your office on March 25th at around 3:43 p.m.</p> <p>4 sent a Zip file with 21 potential deposition exhibits</p> <p>5 for Mr. Cole. And that's what I have now forwarded on</p> <p>6 to Ms. Usher and Chase, who is running the exhibits for</p> <p>7 this deposition.</p> <p>8 MR. FREEMAN: Thank you.</p> <p>9 Q. (BY MR. PERRIN) Mr. Cole, if you'd look at</p> <p>10 Defendant's [sic] Exhibit 7, "Bill of Sale."</p> <p>11 A. Yes.</p> <p>12 Q. If you turn to the third page of that</p> <p>13 document, "Signature Page - Bill of Sale."</p> <p>14 A. That is my signature.</p> <p>15 Q. Dated March 1, 2019?</p> <p>16 A. Yes.</p> <p>17 MR. PERRIN: Chase, are you trying to get</p> <p>18 to it, or do you want us to move on?</p> <p>19 MR. BLAKLEY: I believe, Ed, you said</p> <p>20 "Defendants' Exhibit 7," but you mean Plaintiff's</p> <p>21 Exhibit 7 is the Bill of Sale.</p> <p>22 MR. PERRIN: You are right, J.D. If I</p> <p>23 said it, I misspoke.</p> <p>24 THE VIDEOGRAPHER: Thank you. I was about</p> <p>25 to ask that clarification as well.</p> | <p>1 beginning of that, it's dated March 1, 2019?</p> <p>2 A. Yes.</p> <p>3 Q. And if you turn to Page 15 of that document.</p> <p>4 A. Yes.</p> <p>5 Q. Whose signature is that?</p> <p>6 A. Mine.</p> <p>7 Q. Well, and there's two 15s. The first 15 is, I</p> <p>8 believe, Mr. Szeto?</p> <p>9 A. I see his signature on -- well, it says, "Page</p> <p>10 16 of 19."</p> <p>11 Q. Page 15 of 19.</p> <p>12 A. Sorry. There are two Page 15s. Yes, he</p> <p>13 signed on Page 15 of 19, as did I.</p> <p>14 Q. And then on the duplicate page on the next</p> <p>15 page, you signed on behalf of Super G?</p> <p>16 A. Yes.</p> <p>17 Q. And so is Exhibit 4 a true and correct copy of</p> <p>18 the Amended and Restated Business Loan and Security</p> <p>19 Agreement dated March 1 to Windspeed Trading?</p> <p>20 A. Yes.</p> <p>21 Q. Then look at Defendants' Exhibit Number 5.</p> <p>22 (Exhibit defendant 5 marked.)</p> <p>23 A. I see it.</p> <p>24 MR. BLAKLEY: Do you mean Plaintiff's</p> <p>25 Exhibit Number 5 again?</p> |

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| <p style="text-align: right;">Page 263</p> <p>1 MR. PERRIN: No, I mean Defendants'</p> <p>2 Exhibit Number 5.</p> <p>3 THE WITNESS: Thank you.</p> <p>4 (Defendant Exhibit 5 marked.)</p> <p>5 A. Yes, I see it.</p> <p>6 Q. (BY MR. PERRIN) This is the "Assignment and</p> <p>7 Assumption Agreement"?</p> <p>8 A. Yes.</p> <p>9 Q. Look at the third page, that it's effective</p> <p>10 "as of the day and year first written above." And is</p> <p>11 that your signature at Super G Capital?</p> <p>12 A. Yes, it is.</p> <p>13 Q. And on the preceding page, it's signed by</p> <p>14 Mr. Szeto?</p> <p>15 A. Correct.</p> <p>16 Q. And this is a -- is this a true and correct</p> <p>17 copy of the Assignment and Assumption Agreement?</p> <p>18 A. I believe so.</p> <p>19 Q. So we've gone over the Bill of Sale, the</p> <p>20 Assignment and Assumption Agreement, and the Amended</p> <p>21 Loan Agreement, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And these are all attachments of the</p> <p>24 Foreclosure Sale Agreement and made a part of it,</p> <p>25 correct?</p> | <p style="text-align: right;">Page 265</p> <p>1 Q. I'm not sure I asked you this, so I'm going to</p> <p>2 ask you now. Is this a true and correct copy of the</p> <p>3 Foreclosure Sale Agreement?</p> <p>4 A. Yes, I believe it is.</p> <p>5 Q. I'd ask you to turn to the signature pages.</p> <p>6 A. Starting?</p> <p>7 Q. They are on Motion for Summary Judgment, Page</p> <p>8 87 and 88.</p> <p>9 A. Yes.</p> <p>10 Q. Did you intend -- when signing, where provided</p> <p>11 on Summary Judgment Page 88, did you intend to sign the</p> <p>12 Foreclosure Sale Agreement when you made that signature?</p> <p>13 A. Yes.</p> <p>14 Q. Plaintiff has asserted in pleadings with the</p> <p>15 court that this is a falsified signature page.</p> <p>16 Mr. Cole, is there any reason for anyone to believe, to</p> <p>17 your knowledge, that this is a falsified signature page?</p> <p>18 MR. FREEMAN: Objection, form.</p> <p>19 A. Not to my knowledge.</p> <p>20 Q. (BY MR. PERRIN) Mr. Cole, how would you</p> <p>21 describe Super G's relationship with ACET Global?</p> <p>22 A. Today, nonexistent.</p> <p>23 Q. How about at the time the APA was signed?</p> <p>24 MR. FREEMAN: Objection, form.</p> <p>25 A. As of March 1, 2019?</p> |
| <p style="text-align: right;">Page 264</p> <p>1 A. Yes.</p> <p>2 Q. And they're all dated effective March 1, 2019,</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. And these exhibits, the Bill of Sale, the</p> <p>6 Assignment and Assumption Agreement and Amended Loan</p> <p>7 Agreement, those were done to effectuate the Foreclosure</p> <p>8 Sale Agreement?</p> <p>9 A. Yes.</p> <p>10 Q. Have you ever had any other similar agreements</p> <p>11 or any type of purchase or sale agreements with</p> <p>12 Windspeed other than these documents involved in the</p> <p>13 Foreclosure Sale Agreement?</p> <p>14 A. I don't -- I cannot think of any. Well,</p> <p>15 there's the op -- there's the operating agreement.</p> <p>16 Q. Okay. And you've never had any other asset</p> <p>17 purchase agreement of any kind with Windspeed other than</p> <p>18 this Foreclosure Sale Agreement?</p> <p>19 A. No.</p> <p>20 Q. And it was your intent to sign the Foreclosure</p> <p>21 Sale Agreement where provided?</p> <p>22 A. Yes.</p> <p>23 Q. If you'd take a look at Plaintiff's</p> <p>24 Exhibit 15.</p> <p>25 A. Yes.</p> | <p style="text-align: right;">Page 266</p> <p>1 Q. (BY MR. PERRIN) No, that's the Foreclosure</p> <p>2 Sale Agreement. I'm going back to the original APA</p> <p>3 transaction in July of 2017.</p> <p>4 A. In July of 2017, ACET was a new loan client</p> <p>5 being onboarded into Super G Capital in the ordinary</p> <p>6 course of business.</p> <p>7 Q. And how would you describe your relationship</p> <p>8 with -- Super G's relationship with Windspeed?</p> <p>9 A. As of what date?</p> <p>10 Q. As of the date you made the first loan.</p> <p>11 A. The first loan to Windspeed?</p> <p>12 Q. Yes.</p> <p>13 A. The \$200,000 loan? It was -- the relationship</p> <p>14 was cordial, cooperative; and I was hopeful that the new</p> <p>15 money we provided for working capital would result in a</p> <p>16 better outcome than ACET, and a better outcome than we</p> <p>17 know happened in hindsight.</p> <p>18 Q. Did you feel at that time that Super G was an</p> <p>19 independent -- an entity independent of Windspeed?</p> <p>20 A. Yes.</p> <p>21 Q. Then, real quickly, Mr. Cole, if you would,</p> <p>22 walk me through your history since your college degree</p> <p>23 and any postgraduate degrees and your working history</p> <p>24 going forward.</p> <p>25 A. Short version, graduated Penn State University</p> |

| Page 267 | Page 269 |
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| <p>1 1997 with a bachelor's in finance. I went to work as an 2 investment banking analyst for less than two years. I 3 entered a private equity firm known as Mellon Ventures 4 in 2000 -- in 1999. I had a -- over a four-year or 5 five-year period, I was promoted several times. Did 6 buyouts, private equity investments and mezzanine loans. 7 I left Mellon Ventures in 2004 to be a 8 partner in what you would now refer to as a 9 single-family office. I made investments and loans over 10 a seven-year period. I cofounded a business while in 11 that role that I am still a director of today. And 12 through that experience, I met -- I purchased a business 13 in Chicago from an entrepreneur in California named 14 Darrin Ginsberg, who became a friend and mentor. And in 15 2013, I moved to Newport Beach, California, to join 16 Super G Capital and work with Darrin Ginsberg. 17 And in 2018, I cofounded SG Credit 18 Partners, which I lead today. And in 2019, we sold SG 19 Credit Partners to the private investors that I 20 mentioned earlier in my deposition. And that is my 21 occupation. 22 Q. So since 1999, you've been involved in private 23 equity and lending? 24 A. Correct. 25 Q. When ACET Global originally went into default,</p> | <p>1 Q. (BY MR. FREEMAN) I'm not suggesting; I'm 2 asking. Are you concerned about your company being 3 named? 4 A. Which company? 5 Q. SG Partners -- SG Credit Partners. 6 A. Well, SG Credit Partners was not in existence 7 at the time, so I wouldn't expect it to be -- and it did 8 not purchase the ACET or Windspeed loans, so I would not 9 expect it to be named. 10 Q. Was it -- was this loan not part of the 11 division that was ultimately transferred over to SG? 12 A. The loan was not transferred, no. Specific 13 performing assets were purchased at arm's length; but, 14 unfortunately for Darrin Ginsberg, my new partners had 15 no interest in purchasing non-performing loans. 16 MR. FREEMAN: Objection, nonresponsive. 17 Q. (BY MR. PERRIN) There was discussion earlier 18 about the seller's data or some projections being 19 misstated or incorrect. Do you recall that during your 20 deposition today? 21 A. Yes. 22 MR. FREEMAN: Ed, was that Exhibit 7, 23 Defendants' Exhibit 7? 24 MR. PERRIN: He was asked about any 25 exhibit.</p> |
| Page 268 | Page 270 |
| <p>1 why did Super G not foreclose at that time? 2 A. I did not have the portfolio management team 3 or resources in place at Super G Capital at that time to 4 move as swiftly and aggressively as a lender should; and 5 I was, having had other loan losses, looking to both 6 mitigate a loss and, if possible, defer a loss while we 7 were growing our balance sheet. I believed that we had 8 a small investment firm that would support the company 9 and was hopeful, as you saw in the email correspondence 10 with Steve, that different management and capital 11 support would result in Super G Capital's either full 12 recovery of capital or mitigating the loss of capital. 13 MR. PERRIN: Mr. Cole, I think I will 14 pass the witness. 15 MS. HARD-WILSON: We have no further 16 questions for Mr. Cole. 17 MR. FREEMAN: I have a little re-cross. 18 EXAMINATION 19 BY MR. FREEMAN: 20 Q. Mr. Cole, good to see you again. 21 A. Mr. Freeman. 22 Q. Mr. Cole, are you concerned about being named 23 as a defendant in this case? 24 MR. BLAKLEY: Objection, form. 25 A. Well, I wasn't until you just suggested it.</p> | <p>1 MR. FREEMAN: No, just about the cash 2 flow. 3 MR. PERRIN: I don't understand your 4 question. 5 MR. FREEMAN: Okay. Can we put 6 Defendants' Exhibit 7 on the screen, P&L tab? 7 MR. BLAKLEY: Hey, Karen, as Chase works 8 on that, can you let me know on the record time where 9 we're at? 10 THE REPORTER: I'm sorry. Say that again, 11 Chase. 12 MR. BLAKLEY: This is J.D. 13 THE REPORTER: Oh, J.D. Yeah. 14 MR. BLAKLEY: Do you know where we're at 15 on the record time? 16 THE REPORTER: Yes. We are at one hour 17 and 26 minutes. 18 MR. BLAKLEY: Okay. 19 MR. FREEMAN: J.D., I'm not expecting 20 this to go too long. 21 MR. BLAKLEY: Well, you've got four 22 minutes. 23 MR. FREEMAN: Four minutes? No. 24 MR. PERRIN: That was the agreement for 25 coming back today, if you recall, hour-and-a-half record</p> |

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| <p style="text-align: right;">Page 271</p> <p>1 time.</p> <p>2 MR. FREEMAN: Then we're going to have to</p> <p>3 do -- we're going to have to do it further. I'm going</p> <p>4 to need about 10 to 15.</p> <p>5 MR. BLAKLEY: I believe you've used more</p> <p>6 than six hours of time, Jason.</p> <p>7 MR. FREEMAN: No, I didn't. Guys, let's</p> <p>8 just -- let's just get this over with.</p> <p>9 THE WITNESS: Let's get it over with, if</p> <p>10 we can. I've got a --</p> <p>11 MR. BLAKLEY: My recollection is that</p> <p>12 Mr. Freeman used five hours and 41 minutes on Monday.</p> <p>13 So you have 19 minutes, including what you've used so</p> <p>14 far today.</p> <p>15 MR. FREEMAN: I'll try not to use all of</p> <p>16 it.</p> <p>17 MR. BLAKLEY: Okay.</p> <p>18 Q. (BY MR. FREEMAN) Mr. Cole, you mentioned that</p> <p>19 you believed the seller's data was misstated?</p> <p>20 MR. PERRIN: Objection, form.</p> <p>21 Q. (BY MR. FREEMAN) Is that correct?</p> <p>22 A. I don't think so.</p> <p>23 Q. What did you believe was misstated? Was it</p> <p>24 the cash flow projections?</p> <p>25 MR. BLAKLEY: Objection, form.</p> | <p style="text-align: right;">Page 273</p> <p>1 Q. Who provided these cash flow projections to</p> <p>2 Super G?</p> <p>3 MR. PERRIN: Objection, form.</p> <p>4 Q. (BY MR. FREEMAN) Did Tomer Damti provide them</p> <p>5 to Super G?</p> <p>6 A. I don't know who provided them.</p> <p>7 Q. Did the Baymark parties provide them to Super</p> <p>8 G?</p> <p>9 MR. BLAKLEY: Objection, form.</p> <p>10 MR. PERRIN: Objection, form.</p> <p>11 A. Mr. Freeman, I'm not trying to avoid the</p> <p>12 question. I --</p> <p>13 Q. (BY MR. FREEMAN) Just not sure?</p> <p>14 A. The way material makes it to me is in a</p> <p>15 consolidated form prepared by the investment team.</p> <p>16 Q. Let me ask you some questions on this. If the</p> <p>17 figures there that you see were based on management --</p> <p>18 new management diverting income, would that undermine</p> <p>19 your conclusion about whether the projections provided</p> <p>20 to Super G were correct?</p> <p>21 MR. PERRIN: Objection, form.</p> <p>22 A. Could you ask the question a different way?</p> <p>23 Q. (BY MR. FREEMAN) Yes --</p> <p>24 A. I can see where it's going, but I was told not</p> <p>25 to speculate.</p> |
| <p style="text-align: right;">Page 272</p> <p>1 MR. PERRIN: Objection, form.</p> <p>2 A. I'm not sure how to answer the question. I</p> <p>3 don't know that the historicals were misstated. I</p> <p>4 believe the projections were overstated.</p> <p>5 Q. (BY MR. FREEMAN) Okay. And what do you base</p> <p>6 that conclusion on?</p> <p>7 A. Well, it's very unusual to see a 50 percent</p> <p>8 revenue drop-off. And I can't even compute the</p> <p>9 operating income drop-off. But it is indicative of</p> <p>10 either a change in the world, like we just went through</p> <p>11 with COVID -- but I don't remember any happening at the</p> <p>12 time, so it's -- clearly, there was a -- something</p> <p>13 significant happened. And therefore, it was not</p> <p>14 forecasted, or we wouldn't have made the loan.</p> <p>15 Q. So you're referring to year 2017?</p> <p>16 MR. PERRIN: Objection, form.</p> <p>17 Q. (BY MR. FREEMAN) Are you referring to year</p> <p>18 2017?</p> <p>19 A. So in trailing 12 months, May of '17 --</p> <p>20 Q. Okay.</p> <p>21 A. -- the company had an adjusted EBITDA of a</p> <p>22 million 35. The projection Super G Capital was given</p> <p>23 was a projection of a million nine for fiscal year of</p> <p>24 2017. And it appears that the company, rather than make</p> <p>25 a million nine, lost money. So --</p> | <p style="text-align: right;">Page 274</p> <p>1 Q. Yeah. If new management had diverted income,</p> <p>2 would that undermine your conclusion that the seller</p> <p>3 provided incorrect data?</p> <p>4 MR. PERRIN: Objection, form.</p> <p>5 A. The projection provided to me was incorrect.</p> <p>6 And it's -- I can't answer -- I understand the</p> <p>7 significance of whether that was provided by the seller</p> <p>8 or the buyer. I wish I could answer that, but I don't</p> <p>9 know the answer to that.</p> <p>10 Q. (BY MR. FREEMAN) Could your conclusion about</p> <p>11 whether the seller provided incorrect data change if you</p> <p>12 learned that this was provided to Super G by the Baymark</p> <p>13 parties?</p> <p>14 MR. PERRIN: Objection, form.</p> <p>15 A. In that hypothetical, yes.</p> <p>16 Q. (BY MR. FREEMAN) If new management of ACET</p> <p>17 Global had intentionally not paid the note, would that</p> <p>18 undermine your conclusion?</p> <p>19 MR. PERRIN: Objection, form.</p> <p>20 A. Paid Super G Capital's note?</p> <p>21 Q. (BY MR. FREEMAN) Correct.</p> <p>22 A. In that hypothetical, yes.</p> <p>23 Q. If new management had failed to pay inventory</p> <p>24 vendors -- that is, if ACET Global's new management had</p> <p>25 failed to pay its inventory vendors, could that change</p> |

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1 your conclusion?

2 MR. PERRIN: Objection, form.

3 A. I'm going to try to answer specifically.

4 Q. (BY MR. FREEMAN) Let me withdraw that

5 question for you. Let me ask it a different way.

6 If ACET Global's new management had

7 intended to transfer ACET Global's assets to another

8 company to defraud the seller, would that undermine your

9 conclusion?

10 MR. PERRIN: Objection, form.

11 A. Well, it would be -- that action would be in

12 breach of the loan agreement and defrauding Super G

13 Capital.

14 Q. (BY MR. FREEMAN) But that can -- would that

15 undermine your conclusion that the seller provided

16 incorrect data?

17 MR. PERRIN: Objection, form.

18 A. Again, I -- the projections that I'm reviewing

19 are -- are significantly inconsistent with the

20 historical business. But it would be an important data

21 point as to who provided Super G Capital those

22 projections, and I can't answer it.

23 Q. (BY MR. FREEMAN) Okay. And on those -- those

24 projections -- that Exhibit 7, on those cash flow

25 projections, did that include an item for management

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1 fees?

2 MR. PERRIN: Objection, form.

3 A. The investment committee summary that I'm

4 reviewing is heavily consolidated. It does not include

5 an item for management fees. That said, Super G

6 Capital, in its analysis, may have had a detailed

7 financial statement that I'm not reviewing right now.

8 Q. (BY MR. FREEMAN) Okay. Did that -- or did

9 the cash flow projections include a line item for

10 interest expense?

11 MR. PERRIN: Objection, form.

12 A. I'm looking at only a summary that has all

13 debt service aggregated.

14 Q. (BY MR. FREEMAN) Okay. Do we have Exhibit 7

15 on the screen? Well, the question was: Did the cash

16 flow projections include an item for interest expense?

17 A. This appears to be the operating data and does

18 not incorporate the financing.

19 Q. Okay. Can we -- can we click on the second

20 tab, and the title of this document, as you can see, is

21 "2017/12/19 cash flow Projections"; is that correct?

22 A. Yes, I see that up top.

23 Q. And was there, Mr. Cole, an adjustment for

24 interest expense? I know you're waiting for that to

25 come up on the screen.

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1 MR. FREEMAN: It's all the way to the

2 left. There you go.

3 THE WITNESS: He had it before.

4 MR. FREEMAN: Yeah.

5 THE WITNESS: This is the balance sheet?

6 MR. FREEMAN: I think it's at the very

7 top. There you go.

8 A. There appears to be -- I see what's called

9 "old debt," which may have been the Bank of America

10 line --

11 Q. (BY MR. FREEMAN) Just to --

12 MR. FREEMAN: Can I --

13 MR. PERRIN: I would like you to let the

14 witness finish answering the question.

15 MR. FREEMAN: It's not the -- it's not the

16 exhibit I've asked for.

17 THE VIDEOGRAPHER: I'm sorry. Defendants'

18 Exhibit 7 is an Excel spreadsheet. I have it in a PDF

19 format. So I'm not --

20 MR. FREEMAN: Can I take control of the

21 screen and produce it on mine?

22 THE VIDEOGRAPHER: I believe so. Give me

23 a second.

24 Q. (BY MR. FREEMAN) Mr. Cole, I'll ask you a

25 couple of questions and come back to that.

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1 THE VIDEOGRAPHER: You should have control

2 of it now.

3 MR. FREEMAN: It says you are sharing, so

4 I don't have control of it.

5 THE VIDEOGRAPHER: On mine, it says

6 waiting for Jason Freeman to control your screen.

7 MR. FREEMAN: I wish I could, but I'm

8 clicking on "share screen," and it tells me that.

9 THE VIDEOGRAPHER: Let me --

10 A. I have the spreadsheet, and I can move pretty

11 quick through it.

12 Q. (BY MR. FREEMAN) Okay. If you can, it's the

13 second tab, and I'm asking whether there's an adjustment

14 for interest expense.

15 A. Okay. I've got it open. I'm on the P&L tab.

16 And there is -- I mean, there's year 2017.

17 Q. Yes, sir.

18 A. And I see a nominal amount called -- sorry.

19 Old debt is -- yes, there is an almost \$300,000 interest

20 expense.

21 Q. Is that significantly more than in any

22 preceding year?

23 MR. PERRIN: Objection, form.

24 A. Yes.

25 Q. (BY MR. FREEMAN) And are there adjustments

| Page 279 | Page 281 |
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| <p>1 for "professional fees"?</p> <p>2 MR. PERRIN: Objection, form.</p> <p>3 A. I see "management adjustment."</p> <p>4 Q. (BY MR. FREEMAN) Okay. So there's an</p> <p>5 adjustment for "management adjustment." Is there an</p> <p>6 adjustment for "owner compensation"?</p> <p>7 A. I don't see that in the add backs.</p> <p>8 Q. No?</p> <p>9 A. No.</p> <p>10 Q. If you look on Line 60?</p> <p>11 A. I see 201,000 of management adjustments.</p> <p>12 Q. Okay. Yeah, management adjustments. Do we</p> <p>13 have a due diligence adjustment?</p> <p>14 A. \$2,000 in 2017.</p> <p>15 Q. And are there pro forma adjustments?</p> <p>16 A. No, none.</p> <p>17 Q. Are you sure about that? Not in 2017 solely.</p> <p>18 A. Well, I see -- in other periods, yes.</p> <p>19 Q. Okay. Are there any Baymark fees listed, like</p> <p>20 on Line 71?</p> <p>21 MR. PERRIN: Objection, form.</p> <p>22 A. 29,000 and change in 2017.</p> <p>23 Q. (BY MR. FREEMAN) Okay. And under that due</p> <p>24 diligence form, is there a "QOE" in parentheses?</p> <p>25 A. Yes.</p> | <p>1 Q. (BY MR. FREEMAN) Okay.</p> <p>2 A. And I'm not -- you're showing me a</p> <p>3 spreadsheet. I'm not sure whose spreadsheet this is,</p> <p>4 but I'm -- my comments earlier about the projections</p> <p>5 being overstated reflect the numbers of \$5 million of</p> <p>6 revenue and almost 2 million of adjusted EBITDA for the</p> <p>7 year 2017 that are in my investment summary.</p> <p>8 Q. So Super G didn't even have this Exhibit 7</p> <p>9 when it made the 2017 loan, did it?</p> <p>10 A. I don't know.</p> <p>11 MR. PERRIN: Objection, form.</p> <p>12 Q. (BY MR. FREEMAN) Would you be familiar with</p> <p>13 the metadata on this form that indicates it has an</p> <p>14 author of Matt?</p> <p>15 MR. PERRIN: Objection, form.</p> <p>16 A. Okay. Can you ask that question differently?</p> <p>17 Q. (BY MR. FREEMAN) Are you familiar with the</p> <p>18 metadata on this document and that it reflects an author</p> <p>19 named Matt?</p> <p>20 A. I'm not familiar with the document.</p> <p>21 Q. Are you familiar that the metadata reflects</p> <p>22 that this document was created on January 31st, 2018 at</p> <p>23 3:11 p.m.?</p> <p>24 MR. PERRIN: Objection, form.</p> <p>25 MR. FREEMAN: I would like to put</p> |
| Page 280 | Page 282 |
| <p>1 Q. And do you understand that to refer to</p> <p>2 "quality of earnings"?</p> <p>3 A. I do.</p> <p>4 Q. And if you'll look to the fifth tab in this</p> <p>5 spreadsheet, "QOE Adjustment," do you know who prepared</p> <p>6 this spreadsheet tab?</p> <p>7 A. I do not.</p> <p>8 MR. PERRIN: Objection, form.</p> <p>9 Q. (BY MR. FREEMAN) Does it reflect management</p> <p>10 adjustments?</p> <p>11 A. Yes, significant.</p> <p>12 Q. Does it reflect bad debt expenses?</p> <p>13 A. Yes.</p> <p>14 MR. PERRIN: Objection, form.</p> <p>15 Q. (BY MR. FREEMAN) Does -- what specifically on</p> <p>16 here do you believe is incorrect?</p> <p>17 MR. PERRIN: Objection, form.</p> <p>18 A. I would say, again, I believe the projection</p> <p>19 is materially out of line with historical performance.</p> <p>20 Q. (BY MR. FREEMAN) Okay. And what on the P&L,</p> <p>21 the cash flow statement, do you believe is --</p> <p>22 specifically, you believe is incorrect?</p> <p>23 MR. PERRIN: Objection, form.</p> <p>24 A. Well, the projection that I have is adjusted</p> <p>25 EBITDA of a million nine for the year 2017.</p> | <p>1 Exhibit 12 up. This is Defendants' Exhibit 12. The</p> <p>2 other spreadsheet, ACET Flow of Funds.</p> <p>3 Q. (BY MR. FREEMAN) Mr. Cole, were you familiar</p> <p>4 with this document?</p> <p>5 A. I was as of this morning.</p> <p>6 Q. Super G didn't have this exact document in its</p> <p>7 files when it made the loan in 2017, did it?</p> <p>8 A. I don't know --</p> <p>9 MR. PERRIN: Objection, form.</p> <p>10 A. -- the answer to that.</p> <p>11 Q. (BY MR. FREEMAN) Are you familiar with its</p> <p>12 author, Kyle Hynden?</p> <p>13 A. I don't know that name.</p> <p>14 MR. PERRIN: Objection, form.</p> <p>15 Q. (BY MR. FREEMAN) For the Cortec Group?</p> <p>16 A. I don't know that name.</p> <p>17 Q. Are you familiar that the metadata reflects</p> <p>18 that this document was last modified April 1st, 2021, at</p> <p>19 11:53 a.m.?</p> <p>20 MR. PERRIN: Objection, form.</p> <p>21 A. I am not -- I have not seen this document</p> <p>22 until this morning.</p> <p>23 Q. (BY MR. FREEMAN) Okay. And Mr. Cole, we</p> <p>24 talked previously about a notice that you sent out in</p> <p>25 late January of 2019 to Mr. Damti?</p> |

20 (Pages 279 to 282)

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1 A. Yes.
2 Q. And that was the foreclosure notice?
3 A. Yes, January 2019.
4 Q. And that notice was returned to sender, was it
5 not?
6 MR. PERRIN: Objection, form.
7 A. No, that's not my knowledge.
8 Q. (BY MR. FREEMAN) It wasn't returned to sender
9 stamped by the Post Office February 2nd, 2019?
10 MR. PERRIN: Objection, form.
11 A. I don't recall that, no.
12 Q. (BY MR. FREEMAN) No? Could that be because
13 it was returned to Baymark Partners, LP, and ACET
14 Global, LLC, attention David Hook?
15 MR. PERRIN: Objection, form.
16 A. The letter that I sent --
17 Q. (BY MR. FREEMAN) Correct.
18 A. -- from my office was returned to Baymark?
19 Q. Did Baymark Partners, LP, send that notice?
20 A. I don't believe so because I was carefully
21 following protocol to provide notice. I would have
22 known that.
23 Q. Okay. You mentioned you didn't have a team in
24 place to do the foreclosure in 2018?
25 A. To do the portfolio management.

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1 Q. Right. Did Super G grow significantly
2 during -- throughout 2018?
3 A. Yes.
4 Q. What -- wasn't that the year that you started
5 SG?
6 A. My team worked for Super G Capital until we --
7 we formed the legal entity in 2018, and we joined SG
8 Credit as our employer in April of 2019.
9 Q. Okay. So at that time, though, you know,
10 regardless of what staff you had, you had the team in
11 place that was sufficient to vet a restructuring plan,
12 correct?
13 MR. PERRIN: Objection, form.
14 A. Yes.
15 Q. (BY MR. FREEMAN) And that restructuring plan
16 was a transfer to Windspeed; is that correct?
17 MR. PERRIN: Objection, form.
18 MR. BLAKLEY: Objection, form.
19 A. The restructuring plan was a foreclosure and a
20 sale of the assets to Windspeed.
21 Q. (BY MR. FREEMAN) Thank you.
22 And just to circle back to the projections
23 that we had, based on what you know, is it equally
24 possible that ACET Global's new management was the cause
25 of the deficiency in the projections?

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1 MR. PERRIN: Objection, form.
2 A. Again, I don't know who prepared the
3 projections, the buyer or the seller, that Super G
4 Capital underwrote.
5 Q. (BY MR. FREEMAN) So based upon that, you
6 don't really have a basis to conclude that the seller
7 provided any inaccurate or false projections, do you?
8 MR. PERRIN: Objection, form.
9 A. No. And I don't believe that I said that they
10 did.
11 Q. (BY MR. FREEMAN) Okay. So it's not your
12 opinion that the seller of assets to ACET Global
13 provided incorrect projections in any respect?
14 A. I'm not knowledgeable to make that opinion. I
15 stand by my statement that the projections in Super G
16 Capital's possession as presented to me in summary form
17 appear to be overstated.
18 Q. Okay. And just a couple last questions. Is
19 it customary to sign a loan agreement several weeks
20 after the date of the document?
21 MR. BLAKLEY: Objection, form.
22 A. No, that's not customary.
23 Q. (BY MR. FREEMAN) Did you sign any loan
24 documents here after they were signed by William Szeto?
25 A. I don't know. I'm not sure. It's -- it was

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1 Super G Capital's procedure back before the use of
2 DocuSign that the borrower would sign, would send the
3 agreement to Super G Capital's office, and then a Super
4 G Capital representative would sign upon receipt.
5 Q. Okay.
6 MR. FREEMAN: I believe that's all the
7 questions I have. Pass the witness.
8 MR. BLAKLEY: I don't have anything for
9 him. Anybody else?
10 MR. PERRIN: Good here.
11 MR. BLAKLEY: All right. Thank you,
12 Marc.
13 (End of proceedings.)
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1 CHANGES AND SIGNATURE

2 WITNESS NAME: MARC COLE

3 DATE OF DEPOSITION: April 1, 2021

4 PAGE LINE CHANGE REASON

5 _____

6 _____

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1 I, MARC COLE, have read the foregoing

2 deposition and hereby affix my signature that same is

3 true and correct, except as noted above.

4

5 _____

6 MARC COLE

7 THE STATE OF _____)

8 COUNTY OF _____)

9

10 Before me, _____, on this day

11 personally appeared MARC COLE, known to me (or proved to

12 me under oath or through _____)

13 (description of identity card or other document) to be

14 the person whose name is subscribed to the foregoing

15 instrument and acknowledged to me that they executed the

16 same for the purposes and consideration therein

17 expressed.

18 Given under my hand and seal of office this

19 _____ day of _____, _____.

20

21 _____

22 NOTARY PUBLIC IN AND FOR

23 THE STATE OF _____

24 COMMISSION EXPIRES: _____

25

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1 NO. DC-19-09828

2 D&T PARTNERS, LLC) IN THE DISTRICT COURT

3 (Successor in interest to)

4 ACET VENTURE PARTNERS,)

5 LLC),)

6)

7) DALLAS COUNTY, TEXAS

8 Plaintiffs)

9)

10 VS.)

11)

12 ACET GLOBAL, LLC; BAYMARK) 116th JUDICIAL DISTRICT

13 ACET HOLDCO, LLC; BAYMARK)

14 MANAGEMENT, LCC; BAYMARK)

15 MANAGEMENT, LLC; BAYMARK)

16 PARTNERS; DAVID HOOK;

17 TONY LUDLOW; and

18 WINDSPEED TRADING, LLC,

19

20 Defendants

21

22 REPORTER'S CERTIFICATION

23 DEPOSITION OF MARC COLE

24 April 1, 2021

25

1 I, Karen Usher, Certified Shorthand Reporter in and

2 for the State of Texas, hereby certify to the following:

3 That the witness, MARC COLE, was duly sworn by the

4 officer and that the transcript of the oral deposition

5 is a true record of the testimony given by the witness;

6 That the deposition transcript was submitted on

7 APRIL 26, 2021 to the witness or to the attorney for the

8 witness for examination, signature and return to me by

9 MAY 16, 2021;

10 That the amount of time used by each party at the

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1 deposition is as follows:

2 MR. JASON B. FREEMAN - 23 MINUTES

3 MR. EDWARD PERRIN - 1 HOUR:23 MINUTES

4 MS. BRENDA HARD-WILSON - 00 HOURS:00 MINUTE(S)

5 MR. JOHN DAVID BLAKLEY - 00 HOURS:00 MINUTE(S)

6 That pursuant to information given to the

7 deposition officer at the time said testimony was taken,

8 the following includes counsel for all parties of

9 record:

10 MR. JASON B. FREEMAN, Attorney for Plaintiff

11 MR. EDWARD PERRIN, Attorney for Defendants Baymark

12 entities

13 MS. BRENDA HARD-WILSON, Attorney for Defendants

14 WINDSPEED TRADING, LLC

15 MR. JOHN DAVID BLAKLEY, Attorney for the Witness

16

17 I further certify that I am neither counsel for,

18 related to, nor employed by any of the parties or

19 attorneys in the action in which this proceeding was

20 taken, and further that I am not financially or

21 otherwise interested in the outcome of the action.

22 Further certification requirements pursuant to Rule

23 203 of TRCP will be certified to after they have

24 occurred.

25 Certified to by me this 25th of April, 2021.

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MARY KAREN USHER, CSR # 5536
Expiration: 1/31/2022
Firm Registration # 10278
USHER REPORTING SERVICES
1326 Lochness Drive
Allen, Texas 75013
(214) 755-1612

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1 FURTHER CERTIFICATION UNDER RULE 203 TRCP
2 The original deposition _____ was _____ was not
3 returned to the deposition officer;

4 If returned, the attached Changes and Signature
5 page contains any changes and the reasons therefore;

6 If returned, the original deposition was delivered
7 to MR. JASON FREEMAN, Custodial Attorney;

8 That \$ _____ is the deposition officer's
9 charges to the Plaintiff for preparing the original
10 deposition transcript and any copies of exhibits;

11 That the deposition was delivered in accordance
12 with Rule 203.3, and that a copy of this certificate was
13 served on all parties shown herein on and filed with the
14 Clerk.

15 Certified to by me this ____ day of _____, 2021.
16
17
18

19 _____
MARY KAREN USHER, CSR # 5536
Expiration: 1/31/2022
Firm Registration # 10278
20 USHER REPORTING SERVICES
1326 Lochness Drive
21 Allen, Texas 75013
(214) 755-1612
22 karen@usherreporting.com
23
24
25

23 (Page 291)

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